

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:FS:LI:POSTF-167896-01  
REGole

date: **JAN 17 2002**

to: Large and Mid-Size Business Division  
Territory Manager (Group [REDACTED] - Financial Services)  
Attn: [REDACTED], Team Leader

from: Associate Area Counsel (CC:LMSB:FS:LI)

subject: [REDACTED]

EIN: [REDACTED]  
UIL: 1461.00-00

This is in further response to your December 14, 2001 request for assistance. We forwarded our January 3, 2002 memorandum to the National Office for its consideration of the advice rendered. The National Office has advised us that it concurs with the advice previously rendered to you. Accordingly, we recommend that in this case you include the following language in the Form 872 for type of tax:

Income Tax to be paid at the source (under Chapter 3 of the Internal Revenue Code) due on Form 1042.

The International Division of Chief Counsel has recommended that the following alternatives of the two versions may be considered for more complete descriptions of the tax:

(a) "Taxes on Nonresident Aliens and Foreign Corporations Withheld in accordance with sections 1441 through 1464 of the Internal Revenue Code" or

(b) "Income Tax to be paid at the source (in accordance with sections 1441 through 1464, Chapter 3, Subtitle A, of the Internal Revenue Code) using Form 1042. "


In subsequent cases you may wish to consider these suggested alternatives.

In addition, the National Office suggests that you pay

strict attention to the rules set forth in the IRM. Specifically, the Statute of Limitations Handbook, IRM 121.2.22 provides procedures for processing consents to extend the statute of limitations on assessment. The IRM requires that this notification be made to the taxpayer by sending or presenting Letter 907(DO) and sending or presenting Publication 1035, which together inform the taxpayer of its right to refuse to extend the limitation period, the right to request the extension to be limited to a particular issue and the right to request the limitation period to be limited to a specific date.

Any questions regarding this opinion should be referred to Rose Gole at (516) 688-1702.

JODY TANCER  
Associate Area Counsel  
Long Island

By:   
ROSE E. GOLE  
Attorney

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Internal Revenue Service  
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date: Jan 3, 2002

to: Large and Mid-Size Business Division  
Territory Manager (Group [REDACTED] - Financial Services)  
Attn: [REDACTED], Team Leader

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subject: [REDACTED]

EIN: [REDACTED]  
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) This is in response to your December 14, 2001 request for assistance. This advice should not be cited as precedent.

**ISSUE**

What language should be used on a Form 872 to extend the period of limitations for Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons?

**CONCLUSION**

We recommend that the following language be used to identify the type of tax in the Form 872:

Income Tax to be paid at the source (under Chapter 3 of the Internal Revenue Code) due on Form 1042.

**FACTS**

The facts, as we understand them to be, are as follows:

The taxpayer filed Forms 1042, Annual Withholding Tax Returns for U.S. Source Income of Foreign Persons for the tax periods ended December 31, [REDACTED] through [REDACTED]. The taxpayer has previously executed a Consent to Extend the Time to Assess Tax, Form 872 for the years [REDACTED] through [REDACTED] until December 31, [REDACTED]. The language on the Consent states that the taxpayer consents to

the extension with respect to:

Income Tax to be paid at the source (under Chapter 3 of the Internal Revenue Code) due on Form 1042.

The Examination Team wishes to execute a Form 872 to protect the statute of limitations for the [REDACTED] year. Also, you may wish to extend the statute for the years [REDACTED] through [REDACTED] beyond December 31, [REDACTED]. Local international agents have recommended that the Form 872 refer to "withholding tax under sections 1441 - 1464" You have requested our advice as to whether the Forms 872 should be captioned with reference to "Chapter 3" or "sections 1441-1464."

### DISCUSSION

A withholding agent who receives and pays over income subject to withholding must generally file an annual income tax return on Form 1042 on or before March 15 of the year subsequent to the end of the calendar year in which the income was paid. A Form 1042-S, "Foreign Person's U.S. Source Income" annual information return must also be filed for amounts paid to a recipient that are subject to reporting. Treas. Reg. § 1.1461-1. A withholding agent is described in Treas. Reg. 1.1441-7:

For purposes of chapter 3 of the Internal Revenue Code and the regulations under such chapter, the term *withholding agent* means any person, U.S. or foreign, that has the control, receipt, custody, disposal, or payment of an item of income of a foreign person subject to withholding, including (but not limited to) a foreign intermediary described in §1.1441-1(e)(3)(i), a foreign partnership, or a U.S. branch described in §1.1441-1(b)(2)(iv)(A) or (E).

IRM Handbook No. 104.6 subsection 13.7.1 directs the use of Forms 872 for the purpose of extending the statute of limitations for withholding income taxes reported on Form 1042.

The Examination Team has questioned whether the Form 872 should reference "withholding taxes under sections 1441 - 1464" or "Income Tax to be paid at the source (under Chapter 3 of the Internal Revenue Code) due on Form 1042."

Both references are technically correct. The Internal Revenue Code is divided into subtitles, chapters and subchapters. Subtitle A covers income taxes. The other subtitles cover other types of taxes, procedures and specific programs. Each subtitle

contains one or several chapters and subchapters. The chapters and subchapters run consecutively. The narrowest reference to an Internal Revenue Code provision is a section reference.

The reference to chapter 3 of the Internal Revenue Code in the previously executed Form 872 properly identifies the taxes covered as received and paid pursuant to Subtitle A - Income Taxes, chapter 3 - Withholding of Tax on Nonresident Aliens and Foreign Corporations. There are several references to "chapter 3" in the regulations. For example, Treas. Regs. §§ 1.1461-1(a), 1.1461-2(a), 1.1461-7(a) all refer to taxes withheld "under chapter 3 of the Code." The Form 872 for the years [REDACTED] through [REDACTED] is valid and binding. The same language could be used for new Form 872s.

The reference to Code sections 1441 -1464 is likewise proper because code sections 1441 through 1464 are within chapter 3. Forms 872 referencing code sections 1441 through 1464 would likewise be valid and defensible as they properly identify the type of tax and Code provisions pertaining to foreign source income and United States withholding tax obligations.

) Given the alternative of choosing between two properly drafted Forms 872, we recommend using the language already contained in the Form 872 for the years [REDACTED] through [REDACTED]. This will have the benefit of consistency for this particular taxpayer.

Under routine procedures this advice will be forwarded to our National Office for review. Accordingly, we recommend that you do not take any further action with respect to the proposed Form 872 until you receive further direction from our office. Any questions regarding this opinion should be referred to Rose Gole at (516) 688-1702.

**DISCLOSURE STATEMENT**

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

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